

Steven A. Kraemer, OSB No. 88247
E-mail: sak@hhw.com
HOFFMAN, HART & WAGNER, LLP
Twentieth Floor
1000 S.W. Broadway
Portland, Oregon 97205
Telephone: (503) 222-4499
Facsimile: (503) 222-2301

Of Attorneys for Defendant David Cox

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BRIAN J. NOAKES and ASLAN NOAKES,

No. 08-6103-HO

Plaintiffs,

v.

DEFENDANT DAVID COX'S
AMENDED ANSWER,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIM

DAVID COX and CITY OF CORVALLIS,

DEMAND FOR JURY TRIAL

Defendants.

Defendant David Cox (hereinafter "defendant") denies each and every allegation of the Complaint, except as admitted in this Answer.

1.

Defendant admits this Court has jurisdiction.

2.

Based upon a lack of information or belief, paragraphs 5 and 6 are denied.

3.

Defendant admits that at all material times he was a Corvallis Police Officer acting within the course and scope of his employment.

Page 1 - DEFENDANT DAVID COX'S AMENDED
ANSWER, AFFIRMATIVE DEFENSES AND
COUNTERCLAIM

HOFFMAN, HART & WAGNER LLP
Attorneys at Law
Twentieth Floor
1000 S.W. Broadway
Portland, Oregon 97205
Telephone (503) 222-4499

4.

Defendant neither admits nor denies the allegations in paragraph 8, which are not directed toward this defendant. In the event an Answer to this allegation is required, defendant admits the allegations in paragraph 8.

5.

Defendant admits paragraph 9.

6.

Defendant admits paragraph 12.

7.

Defendant admits so much of paragraph 13 as alleges that plaintiff Brian Noakes left the parking lot, proceeded a short distance and turned into the Circle K parking lot.

8.

Defendant admits so much of paragraph 14 as alleges that he drove into the Circle K parking lot shortly after plaintiff Brian Noakes and that he parked his patrol car in the same parking lot.

9.

Defendant admits so much of paragraph 15 as alleges no emergency lights or sirens were activated on the patrol car being operated by defendant.

10.

In response to paragraph 17, defendant admits he got out of his patrol car and walked to plaintiff Brian Noakes and then spoke with him.

///

///

11.

Defendant admits so much of paragraph 18 as alleges that defendant asked plaintiff Brian Noakes if he would consent to perform some Standard Field Sobriety Tests and that plaintiff Brian Noakes did consent.

12.

Defendant admits so much of paragraph 21 as alleges that defendant asked plaintiff Brian Noakes to perform some additional Field Sobriety Tests and that plaintiff Brian Noakes agreed to do so.

13.

Defendant admits so much of paragraph 22 as alleges that he had taken all of the classes necessary to perform the Drug Recognition Expert Protocol, or the additional Field Sobriety Tests, but that he had not yet received official certification as a DRE.

14.

Defendant admits paragraph 25.

15.

Defendant admits so much of paragraph 29 as alleges that plaintiff Brian Noakes was transported to Benton County Correctional Facility, that he consented to a breath test which registered 0.00% blood alcohol content and that he submitted to a urine sample.

16.

Defendant admits paragraph 30.

17.

Defendant neither admits nor denies the allegations of paragraphs 31 through 38, which appear to be directed toward the City of Corvallis. However, to the extent any of the paragraphs

and/or allegations within these paragraphs are meant to be allegations to which defendant is expected to respond, they are denied.

FOR FURTHER SEPARATE ANSWER AND BY WAY OF FIRST AFFIRMATIVE DEFENSE, defendant alleges:

17.

Plaintiff Aslan Noakes' first claim for relief fails to state a claim.

FOR FURTHER SEPARATE ANSWER AND BY WAY OF SECOND AFFIRMATIVE DEFENSE, defendant alleges:

18.

In the event plaintiff Aslan Noakes' first claim for relief does state a claim, any so called "force" that was used was reasonable under the circumstances then and there existing and not a violation of the Fourth Amendment.

FOR FURTHER SEPARATE ANSWER AND BY WAY OF THIRD AFFIRMATIVE DEFENSE, defendant alleges:

19.

Defendant is entitled to qualified immunity on plaintiff Aslan Noakes' first claim for relief.

FOR FURTHER SEPARATE ANSWER AND BY WAY OF FOURTH AFFIRMATIVE DEFENSE, defendant alleges:

20.

To the extent applicable to this defendant, defendant alleges some or all of plaintiffs' claims are subject to the conditions, limitations and immunities of the Tort Claims Act, ORS 30.260, *et. seq.*

FOR FURTHER SEPARATE ANSWER AND BY WAY OF FIFTH AFFIRMATIVE DEFENSE, defendant alleges:

21.

There was probable cause to arrest plaintiff Brian J. Noakes and that probable cause constitutes a complete defense to plaintiff Brian J. Noakes' claims.

FOR FURTHER SEPARATE ANSWER AND BY WAY OF SIXTH AFFIRMATIVE DEFENSE, defendant alleges:

22.

In the event there was no probable cause to arrest plaintiff Brian Noakes, defendant is entitled to qualified immunity.

FOR FURTHER SEPARATE ANSWER AND BY WAY OF SEVENTH AFFIRMATIVE DEFENSE, defendant alleges:

Comparative Fault

23.

To the extent some or all of plaintiff Brian Noakes' damages flow from the issuance of the citation, then some or all of those damages are the result of plaintiff Brian Noakes' own fault in refusing to be evaluated by a Drug Recognition Expert, which would have provided him the opportunity to demonstrate he was not impaired.

FOR A COUNTERCLAIM, defendant alleges:

24.

Defendant is entitled to recover his attorney fees, expert witness fees and litigation costs incurred in the defense of this action, pursuant to 42 USC 1988.

///

Defendants demand a trial by jury.

DATED this 13th day of May, 2008.

HOFFMAN, HART & WAGNER, LLP

By: /s/ Steven A. Kraemer
Steven A. Kraemer, OSB No. 88247
Steven A. Kraemer, OSB No. 88247
Of Attorneys for Defendant David Cox
(503)222-4499